

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2022

Public Authority: The Governing Body of the University of
Leicester

Address: Maurice Shock Building
University Road
Leicester LE1 7RH

Decision (including any steps ordered)

1. The complainant has requested details of a survey conducted by the University of Leicester ('the University').
2. The Commissioner's decision is that the information is commercially sensitive and the University is entitled to withhold it under section 43(2) of FOIA. The public interest favours maintaining the exemption. The University's response and refusal breached section 10 and section 17 as they were not provided within 20 working days.
3. The Commissioner does not require the University to take any corrective steps.

Request and response

4. On 28 June 2021, the complainant wrote to the University and requested the following information:

"This is a freedom of information request regarding the raw data of the on-line survey, which was part of the prechange engagement process at the University of Leicester School of Business in autumn 2020. I am not asking for personal information, but for the anonymized responses to the questionnaire initiated by the school of business back in October/November 2020 and, if available, some statistical information about the survey (e.g. response rate)."

5. The University provided some relevant information. It noted that, outside of FOIA, it had previously provided the complainant with a summary of the information recorded in the survey. The University refused to provide the specific information requested, relying on section 43(2) of FOIA in order to do so – a position it upheld at internal review.

Reasons for decision

6. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
7. The University explained to the complainant that most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services. In the University's case its School of Business ('the School') provides services – it delivers degree courses. It relies on the sale of these courses to generate income as it charges for each place.
8. The information requested refers to strengths and weaknesses of the Business and Management area of the School. More specifically, it covers information about research, teaching, partnerships, student outcome and strategic direction. In the University's view, releasing this information would affect the commercial interests of the School. The School of Business operates within a highly competitive market across the UK and around the world.
9. The University went on to explain that if the information was to be disclosed it could hinder the School's ability to recruit students in adequate numbers for the following reasons:
 - Competitors would use this information to highlight their strengths and the School's weaknesses resulting in the School recruiting fewer students.
 - Disclosure would potentially cause reputational damage to the School, hindering its ability to create and maintain partnerships with companies to provide opportunities to students.
 - Third parties and competitors would be aware the School's aim and strategic direction to address new challenges in the future.
10. The Commissioner is satisfied first that the harm the University envisages relates to commercial interests; its own. Second the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; those the University detailed at paragraph 9.

11. Finally, in the absence of clarity on whether the University considers the envisioned prejudice would happen or would be likely to happen, the Commissioner will accept that the envisioned prejudice would be likely to happen. The Commissioner's decision is therefore that the University was entitled to apply section 43(2) to the withheld information and he will go on to consider the associated public interest test.
12. The complainant has suspicions about the information the University previously provided to them, and concerns about wider matters connected to the University. The Commissioner considers these are a private interest for the complainant. However, there is a general public interest in public authorities being open and transparent. But there is a wider public interest in the University being able to compete for, and attract, the best students and so be in a strong financial position. On balance therefore, the Commissioner finds that the public interest favours maintaining the exemption.
13. Under section 10(1) of FOIA a public authority must communicate requested information within 20 working days of the request. Under section 17(1) it must issue a refusal notice in respect of any exempt information within the same timescale. In this case, the complainant submitted their request on 28 June 2021 and did not receive relevant information or a refusal until 30 September 2021. The University therefore breached section 10(1) and 17(1) of FOIA.

Right of appeal

14. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
16. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF